

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JAIME RIVERA,	:	
Petitioner	:	
vs.	:	CIVIL NO. 1:CV-10-1773
WILLIAM A. SCISM, Warden,	:	
Respondent	:	

O R D E R

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

We are considering the Report and Recommendation of Magistrate Judge Blewitt which recommends we dismiss Petitioner Jaime Rivera's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 for lack of jurisdiction. In response, Rivera filed a motion pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. We will treat his motion as timely filed objections to the Report and Recommendation. Since objections were filed, the Court must "make a *de novo* determination of those portions of the report or specified proposed finding or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(c).

We are not convinced by the petitioner's arguments. Essentially, the petitioner reargues the same arguments made before the magistrate judge. The magistrate judge recommends that we dismiss this habeas petition for lack of jurisdiction because a section 2255 motion is the appropriate avenue through which the petitioner should seek relief. We agree. In a thorough and thoughtful report, the magistrate judge correctly applied relevant case law and the requisite statutory provisions governing

habeas and section 2255 petitions. We see no reason for further comment because our reasoning mirrors that of the magistrate judge.

ACCORDINGLY, this 29th day of November, 2010, it is ordered that upon consideration of the report and recommendation of the magistrate judge (doc. 8), filed October 1, 2010, to which objections were filed, and upon independent review of the record, it is ordered that:

1. The magistrate judge's report is adopted.
2. Plaintiff's objections (doc. 12) are overruled.
3. Petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 is dismissed for lack of subject matter jurisdiction.
4. Petitioner's motion for a show cause order (doc. 4) is denied.
5. Petitioner's motion for leave to file discovery (doc. 5) is denied.
6. Petitioner's motion to amend his petition (doc. 9) is denied as futile.
7. The Clerk of Court shall close this file.

/s/William W. Caldwell
William W. Caldwell
United States District Judge